

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Jose Madriz,

Plaintiff,

v.

**Pramote Sookprasert;
Panawadee Sookprasert;
Vichai Jarusrojvuthikul;** and Does
1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Jose Madriz complains of Pramote Sookprasert; Panawadee Sookprasert; Vichai Jarusrojvuthikul; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He suffers from arthrogryposis, cannot walk, and uses a wheelchair for mobility.
2. Defendants Pramote Sookprasert and Panawadee Sookprasert owned

1 the real property located at or about 22720 Alessandro Blvd., Moreno Valley,
2 California, in January 2019.

3 3. Defendants Pramote Sookprasert and Panawadee Sookprasert own the
4 real property located at or about 22720 Alessandro Blvd., Moreno Valley,
5 California, currently.

6 4. Defendant Vichai Jarusrojvuthikul owned Rice and Spice Thai Cuisine
7 located at or about 22720 Alessandro Blvd., Moreno Valley, California, in
8 January 2019.

9 5. Defendant Vichai Jarusrojvuthikul owns Rice and Spice Thai Cuisine
10 ("Restaurant") located at or about 22720 Alessandro Blvd., Moreno Valley,
11 California, currently.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for the
18 events herein alleged, or is a necessary party for obtaining appropriate relief.
19 Plaintiff will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. The Court has subject matter jurisdiction over the action pursuant to 28
25 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 8. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
4 founded on the fact that the real property which is the subject of this action is
5 located in this district and that Plaintiff's cause of action arose in this district.

6
7 **FACTUAL ALLEGATIONS:**

8 10. Plaintiff went to the Restaurant in January 2019 to eat. This was
9 plaintiff's first visit to this Restaurant. Plaintiff lives nearby and he really
10 enjoyed the food during his first visit. Plaintiff will return once the barriers are
11 removed.

12 11. The Restaurant is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 12. Paths of travel are one of the facilities, privileges, and advantages
15 offered by Defendants to patrons of the Restaurant.

16 13. Unfortunately, the walkway surface to the entrance of the Restaurant
17 was not maintained by the defendants such that it was stable, firm and slip-
18 resistant because of cracked concrete. Indeed, there are several places in the
19 walkway surface where there were large, cracked spaces.

20 14. On information and belief, plaintiff alleges that the defendants do not
21 maintain the walkway surface so that the pavement is kept smooth and free of
22 broken asphalt.

23 15. Additionally, the entrance of the Restaurant had a slope as high as 11%
24 and there was not enough floor space with a level landing.

25 16. Transaction counters are another one of the facilities, privileges, and
26 advantages offered by Defendants to patrons of the Restaurant.

27 17. The transaction counter at the Restaurant was more than 36 inches in
28 height. In fact, the transaction counter was about 41 inches in height.

1 18. There was no lowered, 36 inch portion of the transaction counter at the
2 Restaurant for use by persons in wheelchairs to conduct transactions.

3 19. Currently, the transaction counter at the Restaurant is more than 36
4 inches in height.

5 20. Currently, there is no lowered, 36 inch portion of the transaction
6 counter at the Restaurant for use by persons in wheelchairs to conduct
7 transactions.

8 21. Dining tables are also one of the facilities, privileges, and advantages
9 offered by defendants to persons of the Restaurant.

10 22. In the dining area, there were dining tables for customers to dine at.
11 Unfortunately, the dining tables were not accessible for plaintiff. None of the
12 tables had both sufficient toe clearance and knee clearance necessary for
13 plaintiff during his visit.

14 23. Currently, none of the tables have both sufficient toe clearance and knee
15 clearance necessary for plaintiff.

16 24. Parking spaces are one of the facilities, privileges, and advantages
17 offered by Defendants to patrons of the Restaurant.

18 25. Unfortunately, even though there was a parking space marked and
19 reserved for persons with disabilities in the parking lot serving the Restaurant
20 during Plaintiff's visit, the parking stall and access aisle were not level with
21 each other. The parking stall and access aisle had inaccessible slopes that
22 exceeded 2.1%.

23 26. Currently, the parking stall and access aisle are not level with each other.

24 27. Restrooms are one of the facilities, privileges, and advantages offered
25 by Defendants to patrons of the Restaurant.

26 28. Unfortunately, the path of travel leading to the restroom was only about
27 31 inches in width. The plaintiff could not get to the restroom because of the
28 narrow path of travel.

1 29. Plaintiff personally encountered these barriers.

2 30. This inaccessible facility denied the plaintiff full and equal access and
3 caused him difficulty.

4 31. Meanwhile, and even though the plaintiff did not personally confront
5 the barriers, the restroom mirror is mounted on the wall so that its bottom edge
6 is more than 40 inches above the finish floor. In fact, the restroom mirror is
7 about 53 inches high.

8 32. The restroom sink does not provide any knee clearance for wheelchair
9 users.

10 33. The coat hook is mounted at a height of 65 inches and is not effectively
11 useable by wheelchair users.

12 34. Defendants have failed to maintain in operable working condition those
13 features of facilities and equipment that are required to be readily accessible to
14 and usable by persons with disabilities at the Subject Property.

15 35. The defendants have failed to maintain in working and useable
16 conditions those features required to provide ready access to persons with
17 disabilities.

18 36. The barriers identified above are easily removed without much
19 difficulty or expense. They are the types of barriers identified by the
20 Department of Justice as presumably readily achievable to remove and, in fact,
21 these barriers are readily achievable to remove. Moreover, there are numerous
22 alternative accommodations that could be made to provide a greater level of
23 access if complete removal were not achievable.

24 37. A common barrier removal project is modifying transaction counters to
25 make a portion of the counter accessible. This is a simple construction task,
26 well within the capabilities of any general contractor. The task can be
27 completed easily and for a modest price.

28 38. For example, there are numerous paint/stripe companies that will come

1 and stripe a level parking stall and access aisle and install proper signage on
 2 rapid notice, with very modest expense, sometimes as low as \$300 in full
 3 compliance with federal and state access standards.

4 39. The mirror could be lowered at little to no cost.

5 40. Plaintiff will return to the Restaurant to avail himself of its goods or
 6 services and to determine compliance with the disability access laws. He is
 7 currently deterred from doing so because of his knowledge of the existing
 8 barriers. If the barriers are not removed, the plaintiff will face unlawful and
 9 discriminatory barriers again.

10 41. Given the obvious and blatant nature of the barriers and violations
 11 alleged herein, the plaintiff alleges, on information and belief, that there are
 12 other violations and barriers on the site that relate to his disability. Plaintiff will
 13 amend the complaint, to provide proper notice regarding the scope of this
 14 lawsuit, once he conducts a site inspection. However, please be on notice that
 15 the plaintiff seeks to have all barriers related to his disability remedied. See
 16 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 17 encounters one barrier at a site, he can sue to have all barriers that relate to his
 18 disability removed regardless of whether he personally encountered them).

19
 20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 21 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 22 Defendants.) (42 U.S.C. section 12101, et seq.)

23 42. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 24 again herein, the allegations contained in all prior paragraphs of this
 25 complaint.

26 43. Under the ADA, it is an act of discrimination to fail to ensure that the
 27 privileges, advantages, accommodations, facilities, goods and services of any
 28 place of public accommodation is offered on a full and equal basis by anyone

1 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
2 § 12182(a). Discrimination is defined, inter alia, as follows:

- 3 a. A failure to make reasonable modifications in policies, practices,
4 or procedures, when such modifications are necessary to afford
5 goods, services, facilities, privileges, advantages, or
6 accommodations to individuals with disabilities, unless the
7 accommodation would work a fundamental alteration of those
8 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to remove architectural barriers where such removal is
10 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
11 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
12 Appendix "D."
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 44. Ground and floor surfaces must be stable, firm, and slip-resistant. 2010
22 Standards § 302.1.

23 45. Here, the failure to provide an accessible ground surface to the entrance
24 of the Restaurant is a violation of the law.

25 46. The area in front of a doorway must be level and clear. 2010 Standards
26 § 404.2.4.

27 47. Here, the failure to provide a level landing at the entrance is a violation
28 of the law.

1 48. Under the 2010 Standards, where the approach to the sales or service
2 counter is a parallel approach, such as in this case, there must be a portion of
3 the sales counter that is no higher than 36 inches above the floor and 36 inches
4 in width and must extend the same depth as the rest of the sales or service
5 counter top. 2010 Standards § 904.4 & 904.4.1.

6 49. Here, no such accessible counter has been provided in violation of the
7 ADA.

8 50. Space under an element between the finish floor or ground and 9 inches
9 above the finish floor or ground shall be considered toe clearance and shall
10 comply with 2010 Standards §306.2. However, toe clearance shall extend 17
11 inches to 25 inches under an element and it shall be at least 30 inches in width.
12 Space extending greater than 6 inches beyond the available knee clearance at
13 9 inches above the finish floor or ground shall not be considered toe clearance.
14 2010 Standards §§ 306.2 (1-5).

15 51. Here, the defendants' failure to provide accessible tables with the
16 proper knee and toe clearances is a violation of the ADA.

17 52. Under the 2010 Standards, access aisles shall be at the same level as the
18 parking spaces they serve. Changes in level are not permitted. 2010 Standards
19 502.4. "Access aisle are required to be nearly level in all directions to provide
20 a surface for wheelchair transfer to and from vehicles." 2010 Standards §
21 502.4 Advisory. No more than a 1:48 slope is permitted. 2010 Standards §
22 502.4.

23 53. Here, the failure to provide level parking stall is a violation of the law.

24 54. Mirrors shall be mounted with the bottom edge of the reflecting surface
25 no higher than 40 inches above the finish floor. 2010 Standards § 603.3.

26 55. Here, the mirror is mounted higher than the maximum permitted and is
27 a violation of the ADA.

28 56. Sinks must provide knee clearance of at least 9 inches to 27 inches in

1 height. There must also be at least 11 inches of depth. And at least 30 inches
2 in width. 2010 Standards §306.

3 57. Here, no such knee clearance is provided and this is a violation of the
4 ADA.

5 58. Under the 2010 Standards, the maximum height is 48 inches. 2010
6 Standards § 308.3.

7 59. Here, the coat hook is mounted beyond the maximum height
8 requirements in violation of the law.

9 60. There must be an accessible path of travel that connects all buildings,
10 elements and spaces on the same site. The minimum clear width of an
11 accessible route shall be 36 inches. 2010 Standards § 403.5.1.

12 61. Here, the failure to provide an accessible path of travel to the restroom
13 is a violation of the ADA.

14 62. The Safe Harbor provisions of the 2010 Standards are not applicable
15 here because the conditions challenged in this lawsuit do not comply with the
16 1991 Standards.

17 63. A public accommodation must maintain in operable working condition
18 those features of its facilities and equipment that are required to be readily
19 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

20 64. Here, the failure to ensure that the accessible facilities were available
21 and ready to be used by the plaintiff is a violation of the law.

22
23 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
24 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
25 Code § 51-53.)

26 65. Plaintiff repleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint. The Unruh Civil Rights Act ("Unruh Act") guarantees, inter alia,

1 that persons with disabilities are entitled to full and equal accommodations,
2 advantages, facilities, privileges, or services in all business establishment of
3 every kind whatsoever within the jurisdiction of the State of California. Cal.
4 Civ. Code §51(b).

5 66. The Unruh Act provides that a violation of the ADA is a violation of the
6 Unruh Act. Cal. Civ. Code, § 51(f).

7 67. Defendants' acts and omissions, as herein alleged, have violated the
8 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
9 rights to full and equal use of the accommodations, advantages, facilities,
10 privileges, or services offered.

11 68. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
12 discomfort or embarrassment for the plaintiff, the defendants are also each
13 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
14 (c).)

15
16 **PRAYER:**

17 Wherefore, Plaintiff prays that this Court award damages and provide
18 relief as follows:

19 1. For injunctive relief, compelling Defendants to comply with the
20 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
21 plaintiff is not invoking section 55 of the California Civil Code and is not
22 seeking injunctive relief under the Disabled Persons Act at all.

23 2. Damages under the Unruh Civil Rights Act, which provides for actual
24 damages and a statutory minimum of \$4,000 for each offense.

1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: January 29, 2019

CENTER FOR DISABILITY ACCESS

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6 By:



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8 _____
9 Chris Carson, Esq.
10 Attorney for plaintiff
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